Jan 5 1864

Mr Justice Clifford

# SUPREME COURT OF THE UNITED STATES

## No. 250.

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. THE PHŒNIX BANK, PLAINTIFFS IN ERROR,

vs.

THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

Feb 4

Mr Justice Nelson

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1 The answer of the judges of the court of appeals of the State of New York, in the within writ named, doth certify, under the seal of our said court, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof [SEAL.] mention in said writ is made, with all things touching or in anywise concerning the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court:

COR'S TEN BROECK, *Dep. Cl'k.*

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the court of appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, or some of you, between the people of the State of New York, on the relation of the Phenix Bank of the city of New York, against the commissioners of taxes and assessments for the city and county of New York, a manifest error hath happened, to the great damage of the said relators, the Phenix Bank of the city of New York, as is said, and as appears by their complaint, we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this eighteenth day of April, in the year [SEAL.] of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-eighth.

KENNETH G. WHITE,
*Clerk of the circuit court of the United States of America,*
*for the southern district of New York, Second circuit.*

3 Court of appeals.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* the Phenix Bank of the city of New York, appellants,
*against*
THE BOARD of COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK, respondents.
} Case.

On or about the second day of July, one thousand eight hundred and sixty-three, a certiorari was issued out of the supreme court, upon petition of

the said Phenix Bank, and directed to the said board of commissioners of taxes and assessments, commanding them to make return as therein required, to the end that their decision and action in the matter of the assessment of the said Phenix Bank upon the amount of its capital invested in stocks, bonds, and other securities of the United States, might be corrected and reviewed by said court.

That said writ was returnable before the justices of the supreme court, at the City Hall of said city, on the first Monday of July, 1863, at which day the said respondents made return thereto.

The said matter afterwards, and on or about the third Monday of September, one thousand eight hundred and sixty-three, was argued at a
4 general term of said court, held at said city; and afterwards, on the thirtieth day of November, in said year, the said court adjudged the said proceedings and determinations of said commissioners in said assessment to be valid; and afterwards, and on or about the twenty-fourth day of December, in said year, judgment was accordingly entered in favor of said appellants, and against said relators, with the clerk of the city and county of New York, and for forty-six dollars and twenty-seven cents, costs and disbursements.

Afterwards, and on the said twenty-fourth day of said December, an appeal was taken from said judgment to the court of appeals.

No change of parties has taken place.

Pleas before the justices of the supreme court of the State of New York, at a general term thereof, held at the City Hall of the city of New York, on the first Monday of July, in the year one thousand eight hundred and sixty-three.

Present: The Honorable Josiah Sutherland, William H. Leonard, and William F. Allen, justices.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

The people of the State of New York sent to the board of commissioners of taxes and assessments for the said city and county of New York, their certain writ of certiorari, in these words, viz:

[U. S. revenue stamp, 50 cents.]

5 The people of the State of New York to the board of commissioners of taxes and assessments of the city and county of New York,
[L. S.] greeting:

We being willing, for certain causes, to be certified of the proceedings, decision, and action had by and before you, in the matter of the assessment for taxation of the Phenix Bank of the city of New York, by you lately made, do command you that all and singular the said assessment made by you for the year 1863, and all and singular the documents and papers relating thereto, and your decision and action thereon, and the statement, affidavits, and protest presented to you by said bank, with all things touching or concerning the said assessment, as fully and entirely as the same remain before you, you send to our supreme court of judicature, at the City Hall, in the city of New York, on the first Monday of July instant, together with the writ, to the end that your decision and action in the matter of said assessment may be reviewed and corrected on the merits by our said court, and that we may further cause to be done thereupon what of right shall be fit to be done.

Witness Hon. Josiah Sutherland, presiding justice of our said court, at the City Hall, in the city of New York, the second day of July, 1863.

H. W. GENET, *Clerk.*

EDGAR S. VAN WINKLE,
*Petitioners' Attorney*, 48 *Wall St., N. Y.*

Allowed 2d of July, 1863.

JOS. SUTHERLAND, *Inst.*

All and singular which said writ was issued upon the petition of the relators therein named; and said petition, together with the papers therein referred to, and thereto and to said writ annexed, are as follows, that is to say:

6 To the supreme court of the State of New York:

The petition of the Phenix Bank of the city of New York respectfully shows:

That your petitioners are a banking association in the city of New York, formed and existing under and by virtue of the general statutes of this State to authorize the business of banking.

That the deputy tax commissioners of the city and county of New York, entered in the annual record of assessed valuation of real and personal estate, for the present year, one thousand eight hundred and sixty-three, the said association as holding taxable personal property to the amount of one million six hundred and twenty-five thousand dollars; that the said record came to the hands of the board of commissioners of taxes and assess- for the city and county of New York, on or about the twelfth day of January, one thousand eight hundred and sixty-three; that your petitioner being about to make the annual statement and affidavit, required from banking associations by said board, they were directed by said board to make up such statement as of January twelfth, one thousand eight hundred and sixty-three, the day when the said record came to the hands of said board; that your petitioners thereupon made and executed the statement and affidavit of which a copy is hereto annexed and made a part of this petition, and marked Schedule A, and on the twenty-fourth day of April, one thousand eight hundred and sixty-three, presented the same, together with the affidavit, of which a copy is hereto annexed, marked B, to the said board of commissioners; that afterwards, on or about the twenty-second day of June, one thousand eight hundred and sixty-three, your petitioners were notified by said board of commissioners

7 that said board had entered said association in the assessment roll as assessed for one million six hundred and twenty-five thousand dollars of personal estate, of the notice whereof, received on or about the said twenty-second day of June, a copy is hereto annexed, marked Schedule C; that your petitioners thereupon made objection to said assessment, on the ground that the capital and personal estate of said association invested in stocks, bonds, and securities of the United States, was exempt from such assessment; and your petitioners, on the first day of July, one thousand eight hundred and sixty-three, presented to the said board of commissioners a protest and objection in writing, of which a copy is hereto annexed, and made a part of this petition, and marked Schedule D; that your petitioners have been and are at all times ready and willing, and have offered, to produce their president, cashier, and other officers and agents before said board of commissioners, to be examined under oath touching the estate and property of said association; but that the said board of commis-

sioners have overruled all the said objections of your petitioners, and decided to retain the assessment of said association at one million six hundred and twenty-five thousand dollars of taxable personal estate, on the alleged ground that the said association is taxable upon the amount of its capital, although the same is invested wholly in stocks, bonds, and other securities of the United States.

That all and singular the matters and things in said statement and affidavit contained are true; and that the whole capital of said association, and surplus over ten per cent. of its capital, now is, and was at the date of said statement and affidavits, invested in stocks, bonds, and other securities of the United States, owned and held by said association.

That your petitioners are aggrieved by the aforesaid action and decision of said board of commissioners, in assessing said association at one million six hundred and twenty-five thousand dollars personal property,
8 and allege that the same are erroneous, and that said association ought not to be assessed for any amount of personal estate, but is exempt by law from assessment and taxation on the stocks, bonds, and other securities of the United States, in said statement and affidavit mentioned.

Your petitioners therefore pray that a writ of certiorari may be issued and allowed by this court, directed to said board of commissioners, commanding them to certify and return to this court all and singular their proceedings in the premises, and all and singular the documents, records, and papers before them, touching or concerning the same, and that the said decision and action of said board of commissioners may be reviewed and corrected on the merits by this court, and that the aforesaid errors of said board of commissioners may be corrected according to law; that your petitioners may have such other or further relief in the premises as may be meet.

And your petitioners will ever pray, &c.

For the Phenix Bank of the city of New York—

P. M. BRYSON, *Cashier.*

EDGAR S. VAN WINKLE,
*Att'y for Relators, Pl'ff.*

CITY AND COUNTY OF NEW YORK, *ss:*

Peter M. Bryson, being sworn, says that he is the cashier of the Phenix Bank of the city of New York, above named, and that the foregoing petition is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

P. M. BRYSON, *Cashier.*

Sworn before me this 2d day of July, 1863.

JOHN S. AMES, *Notary Public.*

9 **A.**

PHENIX BANK, *New York, Jan. 12th*, 1863.

Statement made and delivered to the commissioners of taxes and assessments of the city and county of New York, for and in behalf of the Phenix Bank of the city of New York, in pursuance of the provisions of title four, chapter thirteen, part first, of the Revised Statutes of the State of New York, and of the acts amendatory thereof, chapter 654, Laws of 1853, and chapters 456 and 536, Laws of 1857:

First. Real estate owned by the said Phenix Bank of the city of New York, viz: Banking-house and lot, No. 45 Wall street, situated in the first ward of the city of New York.

| | |
|---|---|
| Sum actually paid therefor | $175,000 |
| Second. Capital stock of the said Phenix Bank of the city of New York actually paid in | 1,800,000 |
| Excepting therefrom amount paid for real estate, as above stated | 175,000 |
| Amount of the said capital stock held by the State | 000 |
| Amount of capital stock held by ——, being incorporated institution | 000 |
| Third. Amount of surplus profits or reserved funds exceeding ten per cent. of the capital of this bank | 000 |

This bank held and owned at the date above named stocks, bonds, and other securities of the United States to the amount of two million eight hundred and twenty-five thousand and five hundred dollars, as per schedule annexed, and claims exemption from taxation on its capital to that amount.

Fourth. The banking office, or the place of transacting the financial business of the said Phenix Bank of the city of New York, is situated in the first ward of the city of New York, at No. 45 Wall street.

Dated January 12th, 1863.

10 CITY OF NEW YORK, *ss:*

I, Peter M. Bryson, cashier of the Phenix Bank of the city of New York being duly affirmed, do hereby certify and declare that, to the best of my knowledge and belief, the foregoing statement was in all respects just and true at the date thereof, to and of which date said statement is made, as required by the tax commissioners.

(Signed) P. M. BRYSON, *Cashier.*

Sworn before me this twenty-eighth day of April, 1863.

E. H. RIKER, *Notary Public.*

B,

CITY AND COUNTY OF NEW YORK, *ss:*

I, Peter M. Bryson, cashier of the Phenix Bank of the city of New York, being duly sworn, depose and say that the said Phenix Bank of the city of New York held and owned on the twelfth day of January, one thousand eight hundred and sixty-three, stocks, bonds, and other securities of the United States, to the amount of two million eight hundred and twenty-five thousand and five hundred dollars, the same being exempt from taxation "by or under State authority," and that the total value of all other personal estate of the said Phenix Bank of the city of New York at that date did not exceed the amount of debts due from said Phenix Bank of the city of New York. I therefore respectfully claim, on behalf of said Phenix Bank of the city of New York, and as the representative thereof, that it had no taxable personal estate over and above the amount of debts due from said Phenix Bank of the city of New York, (excluding property exempt by
11 law from taxation,) and that no tax can by law be laid on said bank, save as to its real estate.

(Signed) P. M. BRYSON, *Cashier.*

Affirmed before me this twenty-eighth day of April, A. D. 1863.

(Signed) E. H. RIKER, *Notary Public.*

*Schedule.*

| | |
|---|---|
| U. S. 7.30 treasury notes | $706,500 |
| U. S. 6 per ct. bonds, payable 1881 | 732,000 |

| | |
|---|---|
| U. S. 6 per ct. certificates of indebtedness | $421,000 |
| U. S. 5 per ct. certificates of indebtedness | 816,000 |
| | 2,675,500 |
| U. S. 4 per ct. certificates of indebtedness | 150,000 |
| | 2,825,500 |

C.

OFFICE OF THE COMMISSIONERS OF TAXES AND ASSESSMENTS,
32 *Chambers street, (New Court-House,) New York,* , 1863.

To PETER M. BRYSON,
*Cashier of the Phenix Bank.*

SIR: We beg leave to inform you that we have corrected the return of the Bank of , and have assessed the personal estate at

| | | |
|---|---|---|
| Capital | $1,800,000 | $1,625,000 |
| Surplus | | |
| Deducting therefrom for literary and charitable institutions | | |
| Do. cost of real estate | $175,000 | |

12 The rolls will be returned to the board of supervisors on the first Monday of July next, as corrected.

Respectfully,

A. J. WILLIAMSON,
J. W. ALLEN,
J. W. BROWN,
*Commissioners of Taxes and Assessments.*

D.

To the board of commissioners of taxes and assessments of the city and county of New York:

GENTLEMEN: The Phenix Bank of the city of New York objects to the assessment of said bank at one million six hundred and twenty-five thousand dollars of personal estate, after deducting the cost of its real estate, in the assessment roll of the year one thousand eight hundred and sixty-three, claims that the same is erroneous.

Hereby referring to the statement dated January twelfth, one thousand eight hundred and sixty-three, made and delivered to you by this bank on or about the twenty-eighth day of April, one thousand eight hundred and sixty-three, and to the affidavit of Peter M. Bryson, cashier, made on the twenty-eighth day of April, one thousand eight hundred and sixty-three, and also delivered to you on or about that date, this bank claims that it is exempt from assessment and taxation, except on its real estate, because the whole amount of its capital stock and surplus beyond ten per cent. is, and was at the date of said statement and affidavit, invested, as therein mentioned, in stocks, bonds, and other securities of the United States of America.

The said Phenix Bank therefore protests against the said assessment of said bank at one million six hundred and twenty-five thousand dol-
13 lars, and respectfully requests your board to correct the said assessment roll by cancelling that assessment.

The said bank offers to produce before your board the president, cashier, and other officers and agents of said bank, for further examination touching

the said assessment and other matters hereinbefore mentioned and referred to.

Dated the 30th day of June, 1863.

P. M. BRYSON, *Cashier.*

EDGAR S. VAN WINKLE,
*Att'y for said Phenix Bank.*

At which day and place, that is to say, on the return day of said writ to wit, on the first Monday of July, in said year one thousand eight hundred and sixty-three, before the justices of said supreme court, at a general term thereof, held at the said City Hall of the city of New York, came as well the said relators, by Edgar S. Van Winkle, their attorney, as the said respondents, by John E. Develin, their attorney, and now here make return to said writ in the words and figures following, that is to say:

To the supreme court of the State of New York:

We, the undersigned, commissioners of taxes and assessments for the city and county of New York, pursuant to a certain writ of *certiorari*, delivered to us and hereto annexed, do certify and return:

That the deputy tax commissioners did, under our direction, as by law required, assess the actual value of the capital stock of the Phenix Bank of the city of New York, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are liable to taxation upon their capital stock under the
14 laws of this State, and amount of stock held by charitable and literary institutions, at the sum of one million six hundred and twenty-five thousand dollars; and that such assessed valuation was duly entered at detail in the books provided for that purpose and kept in the office of the said commissioners, called "The Annual Record of the Assessed Valuation of Real and Personal Estate;" that notice of such assessment was given to said bank; that thereupon the officers of said bank did appear before us, and did complain of said assessment, and did present to us certain statements in writing, of which a true copy is hereunto annexed, marked .

That thereupon we, the said commissioners, did examine into the said complaint, and, in our judgment, the said assessment was and is correct, and we determined that the actual value of the said capital stock, after making the aforesaid deductions, was one million six hundred and twenty-five thousand dollars, which we believed and now believe to be just; and such assessment stands in the said Annual Record of the Assessed Valuation of Real and Personal Estate as an assessment for that amount against the said bank.

We further state, that our decision thereon was declared, and such reduction made, within thirty days after the said application was made to us, as aforesaid, and prior to the first day of May, A. D. 1863; that said assessment so made, and our action thereupon, were under and in pursuance of the several laws of the State of New York relating to the assessment and collection of taxes in the city and county of New York.

And we do further certify and return, that the said Phenix Bank of the city of New York is, and for several years last past has been, a banking corporation, created under and by the laws of the State of New York, and not otherwise; and, under and in pursuance of such laws, enjoys, and has during all said time enjoyed, certain privileges, and is and has been subject to certain burdens; and, among other burdens, is, and was at the
15 time of such assessment, subject to assessment and taxation upon the value of its capital stock, without regard to the fact that such capital stock, or any portion of it, might be invested in the public stocks,

debts, or bonds of the United States; and that such assessment was not made upon the public stocks or bonds of the United States, but was made, pursuant to the laws of said State of New York, upon the capital stock of said bank, estimated at its just value after making the exceptions and deductions required by the statutes of said State.

In testimony whereof, we, the said commissioners, have, respectively, to these presents subscribed our names and affixed our seals, at the city of New York, this 6th day of July, 1863.

AMOR J. WILLIAMSON. [SEAL.]
J. W. ALLEN. [SEAL.]
JOSH. W. BROWN. [SEAL.]

And hereupon the process thereof is continued between the parties aforesaid of the plea aforesaid in this same court, before the aforesaid justices thereof, now here, until the next term of said court, appointed to be held at the said City Hall of the city of New York, on the third Monday of September, in said year 1863, and the same day is given to the parties aforesaid at the same place.

At which day, before the said justices in general term, at the place last aforesaid, came the parties aforesaid, by their respective attorneys aforesaid, and argument thereupon had of all and singular the premises aforesaid.

And because the said court of the said people, before the aforesaid justices thereof, now here, are not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid of the plea aforesaid in this same court, before the justices
16 thereof, until the fifth Monday of November, in said year 1863, at the said City Hall, and the same day is given to the parties aforesaid, at the same place, to hear the judgment of the said court thereupon.

At which day and place, before the justices aforesaid in general term, came the parties aforesaid, by their respective attorneys aforesaid.

Whereupon all and singular the premises aforesaid being seen and by the court here fully understood, and mature deliberation thereupon had, it appears to the said court that the aforesaid proceedings and determinations of the said board of commissioners of taxes and assessments for the city and county of New York, in the assessment of said relators, be, and same hereby are, in all respects confirmed and held valid, with their costs and disbursements to be taxed, and that thereupon judgment accordingly was entered in these words:

At a general term of the supreme court of the State of New York, at the city of New York, on the 30th day of November, 1863.

Present: Hon. Josiah Sutherland, P. J.; Hon. William H. Leonard and Hon. William T. Allen, justices.

THE PEOPLE, *ex rel.* THE PHENIX BANK,
*ag'st*
THE COMMISSIONERS OF TAXES AND ASSESSMENTS of the City and County of New York.

This matter having been brought to a hearing at a general term
17 of this court, in the city of New York, on the 28th day of September, 1863, upon the petition, certiorari, and return thereto, and counsel for the relators, and for the board of commissioners of taxes and assessments of the city and county of New York, named in said petition, writ,

and proceedings, having been heard, and the court having reviewed upon the merits the decision and action of said commissioners, now, on motion of John E. Develin, of counsel for said commissioners, it is ordered, adjudged, and decreed that the proceedings and determinations of the said commissioners in the assessment of the said relators be, and the same hereby are, in all respects confirmed and held valid. And it is further adjudged that the said commissioners recover from the above-named relators their costs and disbursements, to be taxed by the clerk of the court.

Copy. H. W. GENET, *Clerk.*

[U. S. rev. st., 5 cts.]

Therefore it is considered that the said relators, the Phenix Bank of the city of New York, take nothing by said writ, and that the said proceedings and determinations of said respondents, the board of commissioners of taxes and assessments of the city and county of New York be in all respects confirmed, and that they recover against said relators the sum of forty-six dollars and twenty-seven cents, for the costs and charges by them about their suit in this behalf expended, by the said court now here adjudged to the said respondents, and with their assent.

Judgment signed this 24th day of December, 1863.

H. W. GENET, *Clerk.*

18 N. Y. supreme court.

THE PEOPLE, *ex rel.* THE PHENIX BANK of the City of New York, appellants,
*against*
THE COMMISSIONERS OF TAXES AND ASSESSMENTS for the City and County of New York, respondents.
} Notice of appeal.

Please take notice that the plaintiff appeals to the court of appeals from the judgment, and all parts thereof, entered herein on the twenty-fourth day of December, 1863, upon the decision of the general term affirming the proceedings and determinations of the said commissioners of taxes and assessments for the city and county of New York.

Dated New York, December 24, 1863.

EDGAR S. VAN WINKLE,
*Attorney for Relators.*

To JOHN E. DEVELIN,
*Attorney for Respondents.*
H. W. GENET, Esq.,
*Clerk Supreme Court*

STATE OF NEW YORK, *Clerk's Office,*
*City and County of New York.*

I, Henry W. Genet, clerk of the city and county of New York, do hereby certify that I have compared the preceding with the original judgment roll and notice of appeal on file in my office, and that they are true transcripts thereof, and of the whole of such originals.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said county, this twenty-fourth day of December, 1863.

H. W. GENET, *Clerk.*

19 The court of appeals.

THE PEOPLE, *ex rel.* THE PHENIX BANK OF THE CITY OF NEW YORK, appellants,
*against*
THE COMMISSIONERS OF TAXES AND ASSESSMENTS OF THE CITY AND COUNTY OF NEW YORK respondents.
} Affidavit.

STATE OF NEW YORK, *City and County of New York:*

Edgar S. Van Winkle, being duly sworn, says that he is the attorney for the relators in the above-entitled action; that the reasons of the court below for its judgment cannot be procured by deponent, and he believes that none have been given, nor any written opinion delivered thereby.

(Signed,) EDGAR S. VAN WINKLE.

Sworn to before me this 30th December, 1863.

JOHN S. AMES,
*Notary Public N. Y. City.*

[U. S. internal revenue stamp, 5 cents.]

20 STATE OF NEW YORK:

At a court of appeals for the State of New York, held at the Capitol, in the city of Albany, on the 22d day of March, A. D. 1864. Present: Hon. Hiram Denio, chief judge, presiding.

THE PEOPLE OF THE STATE OF NEW YORK, ON THE RELATION OF THE PHENIX BANK, IN NEW YORK, appellants,
THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK, respondents.

The appeal in this cause having been argued by Mr. Edgar S. Van Winkle, counsel for the plaintiffs, appellants, and by Mr James T. Brady and Mr. John E. Develin, of counsel for the defendants, respondents, and due deliberation having been had thereon, it is ordered that so much of the judgment of the supreme court appealed from by the said plaintiffs, appellants, as awards costs to the defendants, be, and the same is hereby, reversed; and that the said judgment be, and the same is hereby, in all other respects affirmed

And the relators, having claimed exemption, under and by virtue of the second section of the act of Congress entitled "An act to authorize the issue of United States notes, and for the redemption on funding thereof, and for funding the floating debt of the United States," passed February 25th, 1862, and by virtue of the eighth section of the first article of the constitution of the United States, from the taxation mentioned in the record in this cause, on the ground that the amount of their capital stock in that respect mentioned in such record, is invested in the public debt of the United States; and the validity of the authority claimed under the statutes of the State of New York entitled "An act in relation to the taxation of moneyed coporations and associations," passed April 29th, 1863, to impose the tax mentioned in the said record, being drawn in question, it is certified that the judgment of this court is against the relators, against such exemption, and in favor of the validity of such authority.

A copy. COR'S TEN BROECK, *Deputy Clerk.*

21 Supreme Court of the United States of America.

THE PEOPLE OF THE STATE OF NEW YORK, ON THE RELATION OF THE PHENIX BANK OF THE CITY OF NEW YORK,
vs.
THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK.
} Bond for costs.

Know all men by these presents that we, Peter M. Bryson and Thomas W. Gale, are held and firmly bound unto the above-named, the commissioners of taxes and assessments for the city and county of New York, the defendants in error, in the sum of five hundred dollars, to be paid to the said defendants in error or their successors, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the twentieth day of April, in the year of our Lord one thousand eight hundred and sixty-four.

Whereas the above named, the people of the State of New York, on the relation of the Phenix Bank of the city of New York have prosecuted a writ of error to the Supreme Court of the United States to reverse
22 the judgment rendered in the above-entitled suit by the judges of the court of appeals of the State of New York, now, therefore, the condition of this obligation is such that if the above named, the people of the State of New York, on the relation of the Phenix Bank of the city of New York, shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

PETER M. BRYSON. [L. S.]
THOS. W. GALE. [L. S.]

Sealed and delivered, and taken and acknowledged this twentieth day of April, 1864, before me. R. E. STILLWELL, *U. S. Com.*

[U. S. int. revenue, 50 cents, cancelled stamp.]

23 UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

Peter M. Bryson and Thomas W. Gale, of the city of New York, being duly sworn, each for himself says that he is a resident of the city of New York, and is worth the sum of one thousand dollars over and above all his just debts and liabilities.

PETER M. BRYSON.
THOS. W GALE.

Sworn to and acknowledged this twentieth day of April, A. D. 1864, before me. R. E. STILLWELL, *U. S. Com.*

[U. S. int. revenue, 10 cents, cancelled stamp.]

Approved April 20th, 1864. S. NELSON.

UNITED STATES OF AMERICA, *ss:*

By the Hon. Samuel Nelson, one of the judges of the Supreme Court of the United States, to the commissioners of taxes and assessments for the city and county of New York, greeting: Whereas the people of the State of New York, on the relation of the Phenix Bank of the city of New York, plaintiffs in error, lately issued out of the Supreme Court of the United States, a writ of error directed to the court of appeals of the State of

New York, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judges thereof, between said plaintiff, and you the said defendants, a manifest error hath happened to the great damage of the said relators, the Phenix Bank of the city of New York; and whereas, for the correction of that error in due manner, the said writ has been issued, returnable to the Supreme Court of the United States, at the Capitol, at the city of Washington, on the first Monday of December next, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the eighteenth day of April, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-eighth.

[SEAL.] S. NELSON.

24 UNITED STATES OF AMERICA,
*Southern District of New York, ss:*

Charles H. Brush, being duly sworn, doth depose and say that he resides at Brooklyn, in the State of New York; that on the 26th day of April, 1864, he served the foregoing citation upon Matthew T. Brennan, the comptroller of the city and county of New York, at his office in said city of New York; and that on the same day he also served said citation upon Jonathan W. Allan and A. J. Williamson, two of the commissioners of taxes and assessments for the city and county of New York, at their office, No. 32 Chambers street, in said city of New York, and that such service upon said Brennan, Allan, and Williamson was made by delivering to and leaving with each of them, in person a true copy of said citation, and at the time of such delivery showing to each of them the said original citation. Deponent further says that on the 26th day of April, 1864, he served said citation on Hon. C. Godfrey Guntner, the mayor of said city of New York, by delivering to and leaving with him, in person, at his office in said city, a true copy thereof, and at the same time showing to him the said original citation. Deponent further says that on said 26th day of April, he served said citation on John E. Develin, esq., the counsel to the corporation of the city of New York, by delivering to and leaving with a person in and having charge of said Develin's office at No. 82 Nassau street, in said city, during said Develin's absence therefrom, a true copy thereof, and at the same time showing to such person the original citation. Deponent further says that on the 27th day of April, 1864, he served said citation upon Josiah W. Brown, one of the commissioners of taxes and assessments for the city and county of New York, at his office, No. 32 Chambers street, in said city, by delivering to and leaving with said Brown in person, a true copy thereof, and at the same time showing to him the said original citation; and
25 that on the same day he served said citation on William M. Tweed, the president of the board of supervisors of said city and county of New York, at his office, No. 237 Broadway, in said city, by delivering to and leaving with him, in person, a true copy thereof, and at the same time showing to him the said original citation. And further deponent saith not.

CHARLES H. BRUSH.

Subscribed and sworn to before me this 28th day of April, 1864.
R. E. STILWELL, *U. S. Com'r.*

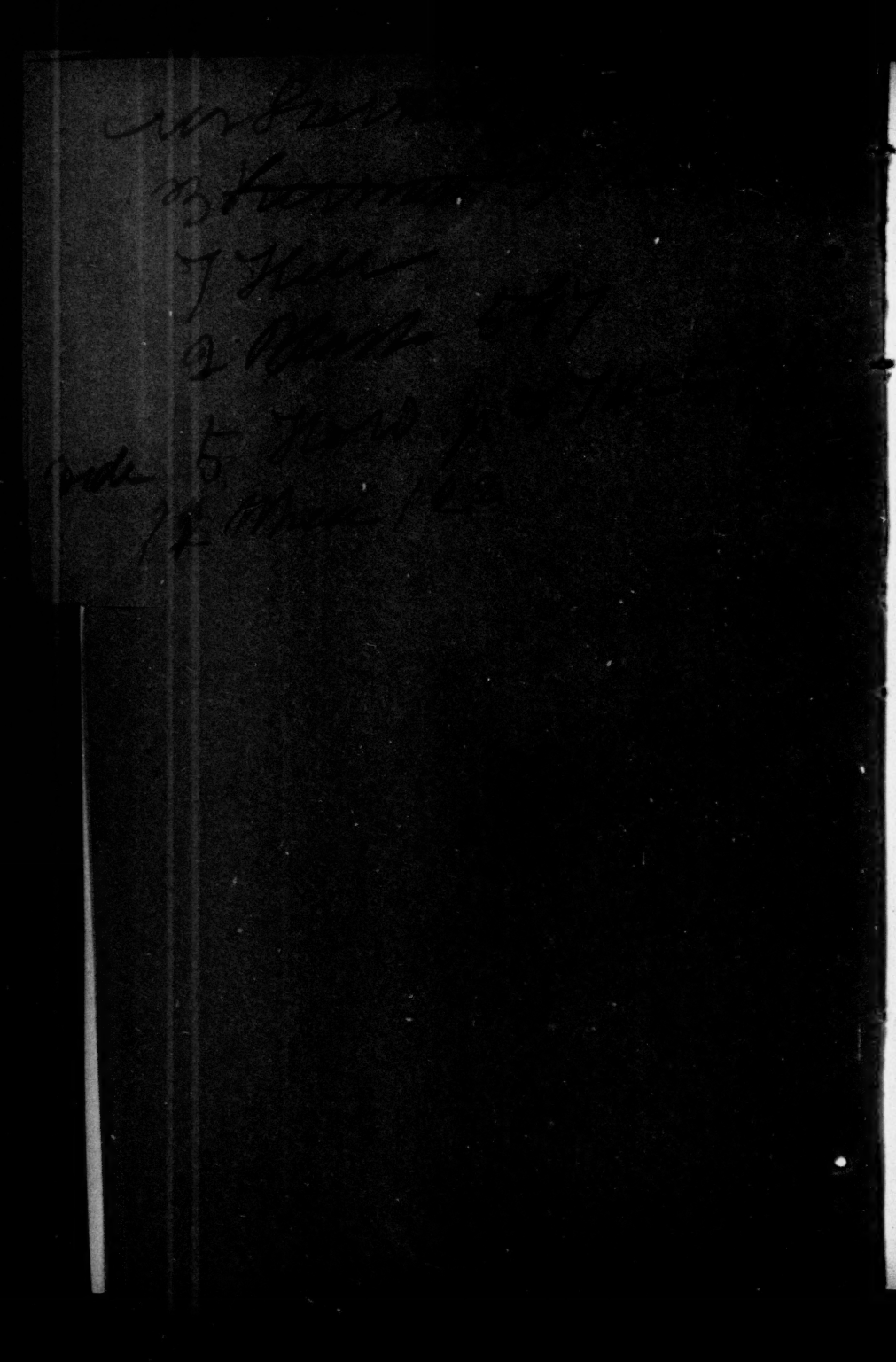
THE PEOPLE OF THE STATE OF NEW YORK ON THE RELATION OF THE PHENIX BANK OF THE CITY OF NEW YORK, plaintiffs in error,
*against*
THE COMMISSIONERS OF TAXES AND ASSESSMENTS FOR THE CITY AND COUNTY OF NEW YORK, defendants in error.

And now, to wit, on this first Monday in December, in the year of our Lord one thousand eight hundred and sixty-four, before this honorable court, come the said plaintiffs in error, by Edgar S. Van Winkle, their attorney, and say, that in the record and proceedings aforesaid, and in the giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given against the said plaintiffs in error, and in favor of the said defendants in error, against the exemption claimed by the said plaintiffs in error, and mentioned in said record, and in favor of the validity of the authority claimed by the said defendants in error, under the act of the legislature of the State of New York, in said record mentioned, to impose the tax in said record mentioned; whereas, by the law of the land, the said judgment ought to have been given for the said plaintiffs in error, and in favor of such exemption so claimed by the plaintiffs in error, and against the validity of the authority so claimed by the defendants in error under the said act of the legislature of the State of New York. And the said plaintiffs in error pray that the judgment aforesaid, for the errors aforesaid, and other
27 errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment, &c.

EDGAR S. VAN WINKLE,
*Attorney for plaintiffs in error, 48 Wall street, New York.*

Filed May 23, 1864.

[REC. CCL, D. T. 1864.]—3



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# Supreme Court

## OF THE UNITED STATES.

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|---|---|
| The People of the State of New York, on the relation of the Phenix Bank of the City of New York, Plaintiffs in Error, *agst.* The Commissioners of Taxes and Assessments for the City and County of New York, Defendants in Error. | Points on the part of Plaintiffs in Error. |

The Phenix Bank, plaintiffs in error, and the relator in the proceedings below, is a banking association, organized under the law of the State of New York, commonly called the General Banking Law.

The amount of its capital stock fixed by its articles and actually paid in, is one million eight hundred thousand dollars.

Its real estate cost one hundred and seventy five thousand dollars, and in respect to the tax on this, no question arises.

The residue of its capital, not invested in real estate, and amounting to one million six hundred and twenty-five thousand dollars, is invested in the stocks, bonds, and other securities issued by the United States.

The Commissioners taxed the whole of this amount, and the proceeding below was to compel them to rectify such

taxation by cancelling it entirely, on the ground that all stocks, bonds, and other securities of the United States are under the constitution and laws of the United States, exempt from taxation. The Supreme Court of the State of New York, in the first district, disallowed this claim and gave judgment for the Commissioners. An appeal was taken from this judgment to the Court of Appeals, which Court affirmed the judgment of the Supreme Court.

This judgment, is a final one, in the highest court of law or equity in the State in which a decision in the suit could be had, and drawing in question the validity of a statute of, and of an authority exercised under the State on the ground of their being repugnant to the constitution or laws of the United States, and the decision having been in favor of such their validity, an appeal was brought to this Court, and the suit is now here on writ of error.

Act of September 24, 1789. § 25.

## Points.

**Point I.** –But for the law of the State of New York, passed April 29th, 1863, (Session Laws, p. 435), no question could possibly arise as to the right of the plaintiffs in error to the exemption asked for, because the Supreme Court of the United States, in the case of The People, *ex. rel.* The Bank of Commerce in New York *vs.* The Commissioners of Taxes and Assessments for the City and County of New York, (2 Black's R., 620), completely settled the question in the State, in all cases arising under the laws thereof, in force prior to the passage of that act. That case reversed the judgment of the Court of Appeals in the same action, and effectually overruled the case of The Bank of the Commonwealth. 23 N. Y. Rep., 192.

Prior to the passage of that act, the law under which the capital stock of corporations was taxed, and in reference to which the decisions referred to, were made, is in these words: "The capital stock of every company

liable to taxation, except such part of it as shall have been excepted in the assessment roll, or as shall have been exempted by law, together with its surplus profits or reserved funds, exceeding ten per cent. of its capital, after deducting the assessed value of its real estate and all shares of stock in other corporations actually owned by such company, which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value and taxed in the same manner as the other personal and real estate of the County."

Session Laws of 1857, ch. 456.

The only alteration of this law is to be found in the act of April 29, 1863, and under the decisions of this court, no possible right to tax the property of a bank invested in stocks of the United States remains, except it can be found in that act, and that it cannot be found therein, is, I think, made manifest in my second point.

**Point II.**—The passage by the Legislature of New York of the act of April 29th, 1863, *did* not, and *could* not, subject to State taxation the stocks of the United States. That act was in these words: "All banks, banking associations, and other moneyed corporations, shall be liable to taxation on a valuation equal to the amount of their capital stock paid in, or secured to be paid in, and their surplus earnings (less ten per cent. of such surplus) in the manner now provided by law, deducting the value of the real estate held by any such corporation or association, and taxable as real estate."

Laws of 1863, p. 435.

(*A.*) That Act did not subject to State taxation the stocks of the United States.

1. It did not repeal any exemption then existing.

2. It was made with knowledge of the laws of exemp-

tion on our Statute Book, of the Constitution of the United States, of the laws of the United States, and of the decisions of the Supreme Court of the United States, and must be construed in subordination to them.

3. It provided that the taxation therein authorized should be made in the manner now provided by law.

4. The law declares, the only subjects of taxation are "Lands" and "Personal Estate." (1 R. S., 388,)

5. All the capital of a corporation not invested in Real Estate, is declared to be "Personal Estate."

6. Therefore, that portion of capital invested in United States Stocks can only be taxed as "Personal Estate."

7. The manner provided by law is, that the Commissioners of Taxes shall fix the valuation, and from it shall be deducted such part as is exempt.

8. If, as claimed, the Act of 1863 fixes an arbitrary valuation, still, from that must be deducted the exemptions provided for by law.

9. Taxation on capital stock is by law taxation on the property in which such capital is invested.

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(*B.*) The Act of April 29th, 1863, could not subject to State taxation the stocks of the United States.

1. If the State has no right to tax stocks of the United States directly, *eo nomine*, it can have no right to do it indirectly; because it is the doing of the thing, and not the manner of doing it, which is forbidden.

2. If the true construction of the Act is, that all United

States Stocks held by banks as capital or surplus are taxable,—then the Act is unconstitutional and void.

3. If the State can, by any indirection, effectually tax United States stocks, then the whole policy of the Constitution vesting sovereign powers in the Federal Government is thwarted, and rendered null and void—no matter how the State accomplishes its end, it does so effectually,—and the instrument by which the United States seeks to carry on one of its sovereign powers, the right to borrow money, is impeded and interfered with.

4. Nor is it any answer to this to say, that such proceeding by the State is a matter of contract between the State and the Bank, and the Bank takes or continues its privilege of banking with the burthen of taxation on a valuation equal to its whole capital. The result is the same—the State taxes, and lays a burthen on, and so far injures the securities of the United States Government.

5. That the Act does not discriminate, in terms, between United States stocks and other property, does not take away its objectionable character;—a right to tax all other property except a certain kind, is not a right to tax that excepted kind,—nor can it be made to confer such right, by subjecting all other property to the same rate of tax that it lays on the United States Stocks.

6. If the State can tax United States Stocks by calling them a "valuation," in the case of a Corporation, it can also tax them in individual hands, by declaring every person shall be taxed on a "valuation" of his lands and personal estate, no matter how invested. This, of course, cannot be done,—and therefore the first cannot be done;—for the reason why a State cannot do the latter is, that it cannot

tax United States stocks,—and this reason applies as strongly to the former case.

7. There is no difference of exemption between stocks of the United States declared free from taxation by an Act of Congress, and stocks of the United States concerning which no such Act exists. They are both equally exempt,—and no Act of Congress is necessary to create or sustain such exemption.

McCulloch *vs.* The State of Maryland, 4 Wheat., 316.

Osborn *vs.* The U. S. Bank, 9 Wheat., 738.

Weston *vs.* The City of Charleston, 2 Peters., 449.

The case of the bank of Commerce above cited, 2 Blacks., R., 620.

Nor do the Commissioners, in their return, claim a right to tax on the ground of want of an exempting Act of Congress.

8. If an Act of Congress is necessary, the Act of 25th February, 1862, is amply sufficient and covers the whole ground. The second section of that Act is in these words: "All stocks, bonds and other securities of the United States, held by individuals, corporations or associations within the United States, shall be exempt from taxation by or under any State authority."

Act of Congress, 1861-2, p. 346.

This has no reference to the time when the stocks were created and issued, or when they shall be acquired, but is applicable to all the stocks, bonds and other securities of the United States. But this Act is merely declaratory, and is not essential.

(*C.*) Justice Sutherland says the Act of 1863 must have been passed with some intention, or for some purpose. It cannot be presumed that that purpose was an evasion of the Constitution and Laws of the United States.

Yet his reasoning tends to prove, that unless it was that, it was without "a meaning or a motive." This is not so. The meaning and motive was:

*First.*—To tax on the full amount of capital paid in or secured to be paid in, irrespective of losses or depreciation on investments.

*Second.*—To alter the amount of surplus funds which should be exempt; for whereas, before, the assessment was on the capital and "its surplus profits or reserved funds exceeding ten per cent. of its capital" (Laws of 1853, Ch. 654, p. 1240,) "it was now made to be on its capital and its surplus earnings, less ten per cent. of such surplus," which is a material alteration.

**Point III.**—The Act of 29th April, 1863, is not applicable to the present case—or, if applicable, it is unconstitutional, as impairing the obligation of a contract.

1. By the laws of the State, the bank was authorized to invest its capital in the stocks of the United States.

2. All the stocks now in question were acquired by the bank when they were not legally subject to taxation as part of the capital of the bank.

3. A charter or act of the Legislature granting banking powers, is in the nature of a contract.
   Fletcher *vs.* Peck, 6 Cranch., 87.
   Dartmouth College *vs.* Woodward, 4 Wheat., 518, 627.

4. Although the General Banking Law contains a clause authorizing the Legislature to alter or repeal its provisions, any act seeking to have a retroactive

or retrospective effect would be a violation of an executed contract.

See Fletcher *vs.* Peck, *ut supra.*

Suppose the law had been that banks may invest their capital in United States stocks, which shall not be subject to State taxation, and a bank on the faith of the law had done so—could the State then, under a power to alter and amend, declare that stocks so purchased under that immunity should be subject to taxation. Could it apply, except to future investments?

By the papers in this case, it appears that all the stocks in question were held by the bank in January, 1863. At that time the State had no right or power to tax them.

In April, 1863, an Act was passed, by which it is claimed a right was conferred to tax these stocks indirectly. There can be no such right.

See State of New Jersey *vs.* Wilson, 7 Cranch., 164.

**Point IV.**—The powers of the General Government are supreme—and no legislation of any State which openly or covertly, expressly or by necessary effect, interferes with or impedes or burthens the exercise of those powers, can be constitutional. That a tax on the public stocks of the United States would interfere with the exercise of this exclusive power to borrow money on the credit of the United States, cannot be doubted. That the stocks held by the Phenix Bank would be depreciated in value, if subject to the unlimited power of indirect taxation by the State, is certain. The amount of the tax to be imposed is one of discretion, if the right to tax exists. If the right exists, what can prevent the State from saying, that the capital of the banks invested in United States stocks shall be taxed on a valuation equal to four times or fifty times its nominal amount. The law of 1863 fixes an arbitrary value on them now.

**Point V.**—Supposing the law of 1863 to be constitutional, and to be applicable to this case, the Commissioners have erred in their assessment. That act declares the assessment shall be made in the manner now provided by law (1 Rev. St., p. 388, § 3); declares that all property, real and personal, exempted from taxation by the Constitution of this State, or under the Constitution of the United States, shall be exempted from taxation; and also declares, that the only subjects of taxation are "lands" and "personal estate." To tax an arbitrary valuation cannot be done; the tax is, in reality, on the property to which the arbitrary valuation is applied—that property is United States stocks. They are, by law, exempt from taxation. To fulfill the law, then, the assessors, having ascertained the amount due on the arbitrary valuation, must deduct all tax on property exempted by law, or if the assessors, being merely administrative officers, must obey the letter of the particular statute, and make the assessment on the arbitrary valuation, the Supreme Court of the State looking to the constitution and all the laws of the State, and of the United States, should have corrected the assessment.

**Point VI.**—The decision of the Supreme Court and Court of Appeals should be reversed, and judgment ordered for the plaintiffs in error.

EDGAR S. VAN WINKLE,
Attorney and of Counsel
for the Phenix Bank.